



BILLING CODE 3410-34-P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 319

[Docket No. APHIS-2019-0024]

RIN 0579-AE66

Cut Flowers Regulations; Removal of Chrysanthemum White Rust-Related Provisions

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the regulations governing the importation of cut flowers to remove requirements for the importation of specific types of cut flowers from the regulations, and to list them in the U.S. Department of Agriculture database called the Agricultural Commodity Import Requirements instead. Updates to these requirements would occur through a noticed-based process rather than rulemaking. We are also proposing to remove entirely any restrictions on the importation of cut flowers of the genera *Chrysanthemum*, *Leucanthemella*, and *Nipponanthemum* from countries in which chrysanthemum white rust (*Puccinia horiana* P. Henn., CWR) is known to exist. For this latter proposed action, we have prepared an analysis, which we are making available for public review and comment, that evaluates the efficacy of the current regulatory requirements in precluding the spread of CWR and the possible economic impacts associated with removing these requirements. These changes would allow us to use a notice-based, streamlined approach to update the import requirements for cut flowers, and it would remove CWR-specific restrictions on the importation of cut flowers.

DATES: We will consider all comments that we receive on or before [Insert date 60 days after date of publication in the Federal Register].

ADDRESSES: You may submit comments by either of the following methods:

- Federal eRulemaking Portal: Go to www.regulations.gov. Enter APHIS-2019-0024 in the Search field. Select the Documents tab, then select the Comment button in the list of documents.
- Postal Mail/Commercial Delivery: Send your comment to Docket No. APHIS-2019-0024, Regulatory Analysis and Development, PPD, APHIS, Station 3A-03.8, 4700 River Road Unit 118, Riverdale, MD 20737-1238.

Supporting documents and any comments we receive on this docket may be viewed at www.regulations.gov or in our reading room, which is located in room 1620 of the USDA South Building, 14th Street and Independence Avenue SW, Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 799-7039 before coming.

FOR FURTHER INFORMATION CONTACT: Ms. Julie Orr, Regulatory Policy Specialist, Regulatory Coordination and Compliance, PPQ, APHIS, 4700 River Road Unit 133, Riverdale, MD 20737-1231; (301) 851-4022.

SUPPLEMENTARY INFORMATION:

Background

Under the Plant Protection Act (7 U.S.C. 7701 *et seq.*), the Secretary of Agriculture is authorized to take such actions as may be necessary to prevent the introduction and spread of plant pests and noxious weeds within the United States. The Secretary has delegated this authority to the Administrator of the Animal and Plant Health Inspection Service (APHIS) within the U.S. Department of Agriculture (USDA).

Pursuant to the regulations in 7 CFR part 319, APHIS prohibits or restricts the importation of plants and plant products into the United States to prevent the introduction of plant pests that are not already established in the United States or plant pests that may be established but are under official control.

The regulations in Subpart P—Cut Flowers, §§ 319.74-1 through 319.74-4 (referred to below as the regulations), govern the importation of cut flowers into the United States. Section 319.74-2 of the regulations contains conditions governing the importation of cut flowers.

Paragraph (a) provides that all imported cut flowers are subject to inspection at ports of entry into the United States, while paragraph (b) describes, in general terms, actions that APHIS may require if cut flowers are found during the inspection to be infested with a plant pest.

Paragraphs (c) and (d) of § 319.74-2 contain requirements regarding specific types of cut flowers. Paragraph (c) provides that any cut flower found upon inspection to be infested with agromyzids (leaf-miners) must be fumigated with methyl bromide in accordance with 7 CFR part 305, which contains our phytosanitary treatment regulations. Paragraph (d) lists the cut flowers of the genera *Chrysanthemum*, *Leucanthemella*, and *Nipponanthemum* that are considered to be hosts of chrysanthemum white rust (*Puccinia horiana* P. Henn., CWR) and countries in which CWR is known to exist. It explains that in order for any of these cut flowers to be imported into the United States, they must be grown in a place of production that is registered with the national plant protection organization (NPPO) of the respective country and that is subject to inspection by an APHIS-approved inspector; must be accompanied by a phytosanitary certification or equivalent documentation issued by the NPPO of the exporting country or their designee with an additional declaration that the place of production and the consignment itself were inspected and found free of CWR; and must have the identity of the registered production site marked on their box as well as other shipping documents that accompany the cut flowers.

In addition to the regulations, APHIS maintains the USDA Agricultural Commodity Import Requirements (ACIR) database found on the internet at <https://acir.aphis.usda.gov/s/>. The database contains additional guidance regarding the importation of cut flowers. It also contains requirements for the importation of various taxa of cut flowers beyond the general requirements for the importation of all cut flowers.

Proposed Notice-Based Process for Revising Requirements for the Importation of Cut Flowers

We are proposing to revise § 319.74-2 to remove requirements regarding specific types of cut flowers from the regulations, to establish the ACIR database as the single location where such requirements are found, and to incorporate a notice-based process for updating these requirements.

As revised, paragraph (c) of § 319.74-2 would provide that, in addition to any other general conditions for importation in the section, APHIS may impose additional restrictions on the importation of specific types of cut flowers in order to effectively mitigate the risk of introducing quarantine pests into the United States. For the taxa of cut flowers whose importation is subject to additional restrictions, and the specific restrictions that apply to the importation of the cut flowers, please consult the ACIR database.

As revised, paragraph (d) of § 319.74-2 would provide the process for adding, changing, or removing restrictions on the importation of a particular type of cut flowers. Paragraph (d)(1) would provide that, if APHIS determines that the requirements for the importation of a specific type of cut flower are no longer necessary to reasonably mitigate the pest risk posed by the cut flower, we would publish a notice in the *Federal Register* proposing to revise the requirements for the importation of the cut flower. The notice would also make the new pest risk documentation on which these proposed requirements are based available for public comment. The notice would allow for at least 60 days of public comment.

We would then issue a second notice after the close of the public comment period. This notice would inform the public of our decision whether to remove or relax requirements for the importation of the cut flower, and it would respond to any comments received on the initial notice.

These provisions are modeled on the notice-based process for relaxing restrictions on the importation of plants for planting, which is found in 7 CFR 319.37-20, and the notice-based process for relaxing restrictions on the importation of fruits and vegetables, which is found in

7 CFR 319.56-4. APHIS has found that such notice-based processes allow us to respond to changes in the pest risk associated with the importation of plants for planting and fruits and vegetables in a timelier manner than rulemaking, while still providing the public with an opportunity to thoroughly evaluate the risk documentation on which our proposed changes are based.

Proposed paragraph (d)(2) would provide the process for adding restrictions to the importation of a specific type of cut flower. If APHIS determines that the requirements for the importation of a specific type of cut flower are no longer sufficient to reasonably mitigate the pest risk posed by the cut flower, we would prohibit or further restrict importation of the cut flower. We would subsequently publish a notice in the *Federal Register* advising the public of our finding. The notice would specify the amended importation requirements, provide an effective date for the change, and invite public comment on the subject. This process is modeled on the process found in § 319.56-4, which we have used, in conjunction with Federal Orders, in order to impose additional restrictions on the importation of fruits and vegetables based on newly identified pest risks.

In § 319.74-2, we are proposing to redesignate current paragraphs (e) and (f) as paragraphs (f) and (g), respectively. We would add a new paragraph (e) to provide that types of cut flowers whose importation was subject to specific restrictions by specific regulation as of the effective date of any final rule following this proposed rule would continue to be subject to those restrictions, except as changed in accordance with the process specified in proposed paragraph (d) of § 319.74-2. It would further provide that these restrictions are found in the ACIR database.

Finally, we are proposing to add two definitions to § 319.74-1, which contains definitions of terms used in the regulations, in order to clarify the meaning of two terms (*quarantine pest* and *USDA ACIR database*) that would be used in § 319.74-2.

We would define *quarantine pest* as a pest of potential economic importance to the area endangered by it and not yet present there, or present but not widely distributed there and being officially controlled. This is the definition used by the International Plant Protection Convention (IPPC) in International Standards for Phytosanitary Measures (ISPM) No. 5, “Glossary of Phytosanitary Terms.”¹ The United States is a member of the IPPC and a signatory to ISPM No. 5. This is also the definition used in our regulations governing the importation of fruit and vegetables.

The definition for *USDA ACIR database* would provide that it is a database that contains restrictions on the importation of specific types of cut flowers, as provided in § 319.74-2, and other information about the importation of cut flowers as provided in the regulations. The definition would also provide the location on the internet where the database may be found, as well as the means of obtaining a written copy of the downloadable information.

For assistance obtaining a hard copy of commodity import requirements for an article(s), individuals may call (301) 851-2046, or (877) 770-5990 (toll-free automated system); email: acirdatabase.comments@usda.gov; or state a request in writing to United States Department of Agriculture, Animal and Plant Health Inspection Service; Attention: PPQ-PEIP-IRM-ISMU; 4700 River Road Unit 133, Riverdale, MD 20737.

Removal of CWR-related Restrictions on the Importation of Cut Flowers

If this rule is finalized, we would move the restrictions on cut flowers that are currently found in paragraph (c) of § 319.74-2 (those pertaining to cut flowers found upon inspection to be infested with agromyzids) from the regulations to the ACIR database, thus retaining the restrictions. We would not, however, retain restrictions on the importation of cut flowers of the genera *Chrysanthemum*, *Leucanthemella*, and *Nipponanthemum* that are hosts of CWR from countries in which CWR is known to exist. We are proposing to relieve such restrictions based on an economic evaluation analysis, titled “Economic Evaluation of the Regulatory Policy for

¹ <https://www.fao.org/3/mc891e/mc891e.pdf>.

Chrysanthemum White Rust (CWR) (*Puccinia horiana* Henn.) in the United States,” which we are making available for public comment along with this proposed rule. The economic evaluation (EE) determines that it is no longer technically or economically justified to consider CWR to be of quarantine significance.

Executive Order 12866 and Regulatory Flexibility Act

This proposed rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

In accordance with 5 U.S.C. 603, we have performed an initial regulatory flexibility analysis, which is summarized below, regarding the economic effects of this proposed rule on small entities. Copies of the full analysis are available by contacting the person listed under FOR FURTHER INFORMATION CONTACT or on the Regulations.gov website (see ADDRESSES above for instructions for accessing Regulations.gov).

CWR is considered a pest of quarantine significance in the United States. The aforementioned EE, however, has determined that it is no longer technically or economically justifiable to consider CWR of quarantine significance and thus should be removed from the list of quarantined pests. Plants infected with CWR are considered unmarketable and result in lost sales. The proposed rule, if promulgated, would remove CWR-specific restrictions on cut flower imports and transition the cut flower regulations to a notice-based process for communicating changes in import requirements based on pest risk. Stakeholders would have the opportunity to comment on the notices. The proposed rule directly affects the importation of cut flowers that are considered susceptible to CWR, namely chrysanthemum pompoms. The notice-based

process established by the rule would be of general applicability to importation of all taxa of cut flowers.

We estimate that the time savings afforded by this rule may range from 6 months to 2½ years per notice, relative to the status quo. This is based on comparable estimates in a prior rulemaking (83 FR 46627-46639, Docket No. APHIS-2010-0082) that established a similar notice-based process for the importation of all fruits and vegetables, as well as their interstate movement from Hawaii and the territories. Before that final rule, the rulemaking process for importation or interstate movement from Hawaii and the U.S. territories of fruits and vegetables for which the notice-based process was not applicable took anywhere from 18 months to upward of 3 years. We estimated that the rule would reduce the administrative process needed for approval of these fruits and vegetables to 6 to 12 months. The rulemaking process for cut flowers is currently like that of fruits and vegetables, and the notice-based process that we are proposing would be substantively similar in terms of administrative process needed for approval of the notices. Accordingly, the time savings is expected to be similar for cut flowers.

The Regulatory Flexibility Act requires that agencies specifically consider the economic effects their rules have on small entities as established by the Small Business Administration (SBA) and based on the North American Industry Classification System (NAICS) size standards for economic entities. According to the SBA, entities involved in Floriculture Production with \$1 million or less in annual receipts are classified as small entities.^{2,3} National Agriculture Statistics Service data in 2020 indicates there were about 5,930 producers in the industry with around \$4.8 billion in sales. Of the producers in the floriculture category, a little more than

² Table of Size Standards based on NAICS 2014 [Floriculture Production: NAICS code 111422]. Washington, D.C.: U.S. Small Business Administration, effective August 19, 2019. https://www.sba.gov/sites/default/files/2019-08/SBA%20Table%20of%20Size%20Standards_Effective%20Aug%2019%2C%202019_Rev.pdf.

³ NAICS Code 111422: Floriculture Production is defined as establishments primarily engaged in growing and/or producing floriculture products (e.g., cut flowers and roses, cut cultivated greens, potted flowering and foliage plants, and flower seeds) under cover and in open fields.

1,000 operations had sales of \$500,000 or more.⁴ Thus, at least 81 percent of all floriculture operations can be classified as small entities. The percentage of small entities is likely higher given entities with annual revenue of between \$500,000 and \$750,000.

The proposed rule would only directly pertain to cut flowers that serve as hosts for the CWR fungus. Of the approximately 285 operations engaged in cut flower production, which is a subcategory of the floriculture industry, there are only about 14 chrysanthemum (pompoms) operations. The wholesale value of the cut flower category was about \$295 million in 2020, while that of chrysanthemums (pompoms) was around \$2.8 million (1 percent of the total cut flower wholesale value). This implies most chrysanthemum producers are small entities.⁵

In terms of wholesalers, based on the NAICS code, there are approximately 3,407 business entities classified as Flower, Nursery Stock, and Florists' Supplies Merchant Wholesalers. This category is comprised of establishments that are primarily engaged in the merchant wholesale distribution of flowers, florists' supplies, and/or nursery stock (except plant seeds and plant bulbs). The small-entity standard for these operations is not sales revenue, but whether they have 100 or more employees. According to 2019 U.S. Census Bureau data, 62 entities in this industry category had 100 or more employees and are considered small by SBA standards.⁶

The proposed rule would remove CWR-specific import restrictions only for cut flowers that are susceptible to CWR, specifically chrysanthemums. While the proposed rule may enable foreign producers to send a greater quantity of chrysanthemums to the United States, it is doubtful that the quantity would be large enough to affect chrysanthemum prices or alter demand, as imports are already allowed (albeit with a phytosanitary certificate and/or equivalent

⁴ USDA-NASS, *Floriculture Crops 2020 Summary*. Washington, D.C.: National Agricultural Statistics Service, ISSN: 1949-0917, May 2021, <https://downloads.usda.library.cornell.edu/usda-esmis/files/0p0966899/s4656b62g/g445d913v/floran21.pdf>.

⁵ \$2.8 million divided by 14 entities yields an average value of sales of \$200,000.

⁶ United States Census Bureau 2019 County Business Patterns Survey: <https://data.census.gov/cedsci/table?t=Employment&n=424930>.

documentation). Colombia already dominates this import category, with about 98 percent of chrysanthemum imports.

It is not known how sensitive U.S chrysanthemum prices are to changes in the quantity imported. There is little information with which to quantify the impact of a potential increase in cut chrysanthemum imports on prices, but we assume demand would remain relatively unchanged and the proposed rule should not adversely impact producers, wholesalers, or retailers.

Based on the information we have, there is no reason to conclude that adoption of this proposed rule would result in any significant economic effect on a substantial number of small entities. However, we do not currently have all of the data necessary for a comprehensive analysis of the effects of this proposed rule on small entities. Therefore, we are inviting comments on potential effects. In particular, we are interested in determining the number and kind of small entities that may incur benefits or costs from the implementation of this proposed rule.

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. If this proposed rule is adopted: (1) All State and local laws and regulations that are inconsistent with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

Paperwork Reduction Act

In accordance with section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the reporting and recordkeeping requirements included in this proposed rule are approved by the Office of Management and Budget (OMB) under OMB control number 0579-0049.

E-Government Act Compliance

The Animal and Plant Health Inspection Service is committed to compliance with the E-Government Act to promote the use of the internet and other information technologies, to provide increased opportunities for citizen access to Government information and services, and for other purposes. For information pertinent to E-Government Act compliance related to this proposed rule, please contact Mr. Joseph Moxey, APHIS' Paperwork Reduction Act Coordinator, at (301) 851-2483.

List of Subjects in 7 CFR Part 319

Coffee, Cotton, Fruits, Imports, Logs, Nursery stock, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Rice, Vegetables.

Accordingly, we propose to amend 7 CFR part 319 as follows:

PART 319—FOREIGN QUARANTINE NOTICES

1. The authority citation for part 319 continues to read as follows:

Authority: 7 U.S.C. 1633, 7701-7772, and 7781-7786; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.3.

2. Amend § 319.74-1 by adding, in alphabetical order, definitions for *Quarantine pest* and *USDA Agricultural Commodity Import Requirements database* to read as follows:

§ 319.74-1 Definitions.

* * * * *

Quarantine pest. A pest of potential economic importance to the area endangered by it and not yet present there, or present but not widely distributed there and being officially controlled.

* * * * *

USDA Agricultural Commodity Import Requirements database. The database that contains restrictions on the importation of specific types of cut flowers, as provided in § 319.74-2, and other information about the importation of cut flowers as provided in this subpart. The database is available on the internet at <https://acir.aphis.usda.gov/s/>. Hard copies of commodity

import requirements may be obtained by calling (301) 851-2046 or (877) 770-5990 (toll-free automated system), by emailing acirdatabase.comments@usda.gov, or by submitting a request to the United States Department of Agriculture's Animal and Plant Health Inspection Service, Attention: PPQ-PEIP-IRM-ISMU, 4700 River Road Unit 133, Riverdale, MD 20737-1231.

Written requests for the database information should be marked as such.

3. Amend § 319.74-2 by:

- a. Revising paragraphs (c) and (d);
- b. Redesignating paragraphs (e) and (f) as paragraphs (f) and (g), and adding a new paragraph (e);
- c. In newly redesignated paragraph (f), in the first sentence, by removing the words “under this part” and adding, in their place, the words “in accordance with this part”; and
- d. Revising the OMB citation at the end of the section.

The revisions and addition read as follows:

§ 319.74-2 Conditions governing the entry of cut flowers.

* * * * *

(c) *Location of additional requirements for the importation of specific cut flowers.* In addition to any other general conditions for importation in this section, APHIS may impose additional restrictions on the importation of specific types of cut flowers in order to effectively mitigate the risk of introducing quarantine pests into the United States. For the taxa of cut flowers whose importation is subject to additional restrictions, and the specific restrictions that apply to the importation of those cut flowers, consult the USDA Agricultural Commodity Import Requirements database.

(d) *Process for adding, changing, or removing restrictions.* Restrictions on the importation of specific types of cut flowers will be changed through the following processes:

(1) *Process for removing or relaxing restrictions.* (i) If APHIS determines that the requirements for the importation of a specific type of cut flower are no longer necessary to

reasonably mitigate the pest risk posed by the cut flower, APHIS will publish a notice in the *Federal Register* proposing to revise the requirements for the importation of the cut flower. The notice will also make the new pest risk documentation on which these proposed requirements are based available for public comment. The notice will allow for at least 60 days of public comment.

(ii) APHIS will issue a second notice after the close of the public comment period on the notice described in paragraph (d)(1)(i) of this section. This notice will inform the public of APHIS' decision whether to remove or relax requirements for the importation of the cut flower, and it will respond to any comments received on the initial notice.

(2) *Process for adding restrictions.* If APHIS determines that the requirements for the importation of a specific type of cut flower are no longer sufficient to reasonably mitigate the pest risk posed by the cut flower, APHIS will prohibit or further restrict importation of the cut flower. APHIS will subsequently publish a notice in the *Federal Register* advising the public of its finding. The notice will specify the amended importation requirements, provide an effective date for the change, and will invite public comment on the subject.

(e) *Previously imposed restrictions on the importation of specific types of cut flowers.* Types of cut flowers whose importation was subject to specific restrictions as of [Effective date of final rule], will continue to be subject to those restrictions, except as changed in accordance with the process specified in paragraph (d) of this section. The restrictions are found in the USDA Agricultural Commodity Import Requirements database.

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(Approved by the Office of Management and Budget under control number 0579-0049)

Done in Washington, DC, this 7th day of April 2023.

Michael Watson,

Acting Administrator,
Animal and Plant Health Inspection Service.

[FR Doc. 2023-07894 Filed: 4/14/2023 8:45 am; Publication Date: 4/17/2023]